
STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY :
:
Proposed general increase in electric rates, : **Docket No. 05-0597**
General restructuring of rates, price unbundling :
of bundled service rates, and revision of other :
terms and conditions of service :
:
:
:

REPLY BRIEF
OF
THE BUILDING OWNERS AND MANAGERS ASSOCIATION OF CHICAGO

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Now comes the BUILDING OWNERS AND MANAGERS ASSOCIATION OF CHICAGO (“BOMA”), by its attorneys GIORDANO & NEILAN, LTD., and hereby files its Reply Brief in this proceeding pursuant to Section 200.800 of the Rules of Practice of the Illinois Commerce Commission (the “Commission” or “ICC”).

III. ARGUMENT ON CONTESTED ISSUES

F. Cost of Service Issues

1. Embedded Cost of Service Study

ComEd argues in its Initial Brief that the embedded cost of service study that ComEd has presented in this proceeding is reasonable and should be approved by the Commission. (ComEd In. Br., pg. 184). BOMA does not object to the use of ComEd’s embedded cost of service study to determine how ComEd’s revenue requirement should be split between residential and nonresidential consumers. However, as BOMA argued in its Initial Brief, BOMA contends that ComEd’s embedded cost of service study should not be used to allocate ComEd’s revenue requirement among nonresidential consumers. (BOMA In. Br., pg. 4). Instead, any revenue requirement increase (or decrease) for nonresidential consumers should be allocated on an across-the-board, equal percentage basis to ComEd’s existing nonresidential customer classes (as the Commission did in ComEd’s last delivery services rate case). (BOMA Ex. 2.0, pg. 10, ll. 223-225; ICC Docket 01-0423).

The basis for BOMA’s position is that ComEd’s embedded cost of service study did not analyze the costs of service for the nine existing nonresidential delivery services customer classes which ComEd is proposing to consolidate into only four nonresidential customer classes in this proceeding. (*See* BOMA In. Br., pp. 7-10). ComEd did not

make any argument in its Initial Brief which in any way justified the use of an embedded cost of service study which did not analyze the costs of serving ComEd's existing nonresidential customer classes to allocate the revenue requirement among nonresidential consumers. ComEd's position is that its cost of service study did not need to analyze the costs to serve ComEd's existing nonresidential customer classes because the embedded cost of service study presented by ComEd in its last delivery service case showed a very similar cost of service among ComEd's existing nonresidential customer classes. (*See* ComEd In. Br., pg. 197-198; ComEd Ex. 23.0, pp. 23-24, ll. 491-512). Clearly, ComEd's last embedded cost of service study (which is five years old) is not relevant to the issue of whether ComEd's current embedded cost of service study is valid for purposes of allocating the revenue requirement among nonresidential consumers in this proceeding.

As BOMA witness Mr. David McClanahan testified based on his thirty years of cost of service experience with Southern Company, the proper approach would have been for ComEd to conduct the cost of service study in this case based on the current nonresidential rate classes and then propose consolidation of rate classes if the costs indeed proved to be similar at this time. (BOMA Ex. 2.0, pg. 10, ll. 209-211). Since ComEd did not use the proper approach, ComEd's embedded cost of service study should not be used to allocate any revenue requirement increase (or decrease) among nonresidential consumers. (*See* BOMA In. Br., pp. 7-10).

2. Minimum Distribution System

As BOMA witness Mr. McClanahan testified, an additional flaw in ComEd's embedded cost of service study is its lack of compliance with guidelines published by the

National Association of Regulatory Utility Commissioners (“NARUC”) with respect to FERC accounts 364-368. ComEd’s embedded cost of service study does not comply with these guidelines because the cost study classifies all distribution plant as solely demand-related and thereby ignores the customer-related portions of these FERC accounts. (BOMA Ex. 4.0, pg. 8, ll. 184-192; ComEd Ex. 11.1, Schedule 1b). As discussed below, the attempts of ComEd and Staff to attack BOMA’s position in their initial briefs have failed. Therefore, BOMA urges the Commission to adopt BOMA’s recommendation that the Commission order ComEd to follow NARUC guidelines for allocating costs in FERC accounts 364-368 (i.e., the minimum-size of facilities or minimum-intercept cost of facilities method) in the cost of service study ComEd presents in its next delivery services rate case. (*See* BOMA In. Br., pg. 7; BOMA Ex. 2.0, pg. 13, ll. 287-297).

ComEd contends in its Initial Brief that BOMA’s position on this issue is an attempt to shift costs away from nonresidential customers to residential customers. (ComEd In. Br., pg. 185). Staff’s Initial Brief similarly contends that BOMA’s proposed approach would shift costs from larger customers to smaller customers. (Staff In. Br., pg. 90).

These contentions of ComEd and Staff are completely meritless. Far from being an attempt to “shift” costs, BOMA’s proposal that ComEd follow NARUC guidelines is necessary to determine the customer component costs in FERC accounts 364-368 which is critical to the accurate classification of costs to ComEd’s customers.¹ (BOMA Ex. 2.0, pg. 14, ll. 304-306). The simple truth is that ComEd’s embedded cost of service study misallocates distribution plant costs to consumers because it classifies all costs in FERC

¹ The customer components of distribution facilities are those portions of ComEd’s costs that are directly related to the number of customers on the utility’s system. (BOMA Ex. 2.0, pg. 13, ll. 288-289).

account 364-368 as demand related when there are customer component costs in these accounts. (BOMA Ex. 4.0, pg. 8, ll. 194-197). Clearly, this problem needs to be corrected as soon as possible (i.e., in ComEd's cost of service study in its next delivery services rate case) regardless of the Commission's past decisions on this issue which have no precedential value.

4. Other

a) Weighting Factors

BOMA argued in its Initial Brief ² that yet another flaw in ComEd's embedded cost of service study was the weighting factors that were used to allocate certain types of costs among ComEd's proposed customer classes. (BOMA In. Br., pg. 5; BOMA Ex. 2.0, pg. 14, ll. 309-314). According to BOMA cost of service expert witness Mr. McClanahan, the weighting factors used by ComEd to allocate metering services and billing and accounting expenses should not vary significantly across customer classes but did vary wildly in ComEd's cost of service study. (BOMA Exhibit 4.0, pg. 9, ll. 203-209).

ComEd claimed in its Initial Brief that BOMA witness Mr. McClanahan did not explain why these factors should be similar (ComEd In. Br., pg. 186). However, Mr. McClanahan did provide the following rationale for his position in the record in this case:

For certain utility costs, such as ComEd's investment in metering equipment and customer accounting expenses, the allocation of delivery services costs across nonresidential delivery service customer classes should be essentially the same on a per customer basis because the non-coincident peak ("NCP") parameter required for billing purposes for each customer (i.e., the maximum monthly NCP kW) is the same. Therefore, the weighting factors used by ComEd to derive the allocators for such costs should be very similar.

² Please note that Section III.F.1. Embedded Cost of Service Study in BOMA's Initial Brief addressed the issue of weighting factors. To correspond with ComEd's Initial Brief, however, BOMA has addressed the weighting factors issues in this Reply Brief in Section III.F.4.a) Weighting Factors.

(BOMA Ex. 4.0, pg. 9, ll. 203-208)

ComEd also contends in its Initial Brief that it has provided an explanation of the development of the weighting factors it used in responses to data requests in this proceeding. (ComEd In. Br., pg. 186). However, ComEd's responses to these data requests that purportedly contain these explanations are not part of the record in this proceeding. Consequently, there is nothing in the record that contradicts Mr. McClanahan's sound testimony that ComEd's weighting factors are flawed. (BOMA Ex. 2.0, pg. 14, ll. 315-323). Therefore, the Commission should order ComEd to address the issue of the weighting factors used in ComEd's embedded cost of service study in the cost of service study presented by ComEd in its next delivery services rate case.

H. Rate Design

1. Customer Class Delineations

b) Non-residential ³

As discussed above in Section III.F.1. Embedded Cost of Service Study of this Reply Brief, ComEd proposed to consolidate its present nine nonresidential delivery service customer classes segmented by peak demand into only four customer classes and allocate ComEd's revenue requirement to these new customer classes based on the embedded cost of service study ComEd presented in this case. In its Initial Brief, ComEd beats the dead horse of its primary argument in support of its proposed consolidation of nonresidential delivery service customer classes; i.e., ComEd's contention that the underlying cost of service for its current classes is "sufficiently close" to justify

³ Please note that BOMA addressed the issue of ComEd's proposed consolidation of its nonresidential customer classes in Section III.G.3 Revenue Allocation Other in BOMA's Initial Brief. To correspond with ComEd's Initial Brief, however, BOMA has addressed the issue of ComEd's proposed consolidation in Section III.H.1.b) Customer Class Delineations Non-Residential in this Reply Brief.

combining the classes. (ComEd In. Br., pp. 195). However, ComEd's support for this position in its direct case was a reference to its five year old cost study in ICC Docket 01-0423 which of course cannot possibly establish that the customer classes which ComEd proposes to consolidate currently have similar costs of service. (ComEd Ex. 23.0, pp. 23-24, ll. 491-505).

ComEd tried to recover from this fatal flaw in its rationale for the proposed consolidation of nonresidential delivery service customer classes by presenting a re-run, "illustrative" embedded cost of service study in its rebuttal testimony. (ComEd Ex. 23.0 pg. 25, ll. 535-533; ComEd Ex. 25.0, pp. 4-5, ll. 82-87; ComEd Ex. 25.1). ComEd argues in its Initial Brief that this re-run embedded cost of service study reaffirms ComEd's claim that the costs of serving the classes being consolidated are sufficiently close to justify the consolidation. (ComEd In. Br., pg. 198). However, the only existing ComEd rate class that ComEd added in its re-run embedded cost of service study was the over 10 MW class. (ComEd Ex. 23.0, pg. 25, ll. 525-527). Simply put, ComEd still has not run a current cost of service study for its existing nonresidential customer classes and therefore cannot support the consolidation of these classes. Therefore, the Commission should order ComEd to retain all of its existing nonresidential delivery services customer classes and allocate any revenue requirement increase (or decrease) on an equal percentage, across-the-board basis to ComEd's existing customer classes as the Commission did in ComEd's last delivery services rate case. (ICC Docket 01-0423, Final Order, pg. 137).

(2) Very Large Load Customers

ComEd argues in its Initial Brief that the Commission should adopt ComEd's proposed Very Large Load Delivery Class, thereby consolidating all over 1 MW customer classes into one class, and reject the proposals of other parties to maintain the current nonresidential rate class distinctions. (ComEd In. Br., pg. 198). ComEd claims that BOMA resorts "to using simple percentage increases in the proposed [distribution facilities charges] to claim that the Over 10 MW class should be maintained, in the interest of mitigating rate impacts to these large customers" because it lacks factual evidence to support BOMA's proposal to maintain the current delivery service class distinctions (including the 1-3 MW, 3-6 MW, 6-10 MW and over 10 MW customer classes). (ComEd In. Br., pg. 201). BOMA witnesses T.J. Brookover and Kristav Childress totally refuted this ComEd contention in their rebuttal panel testimony in this case. In response to a similar accusation made by ComEd witness Mr. Crumrine that percentage increases in distribution facilities charges simply elicit optical appeal (ComEd Ex. 23.0, pg. 28, ln. 598), Messrs. Brookover and Childress testified that:

BOMA calculated increases in distribution facilities charges of 133% for over 10 MW consumers. ... The impact of these increases on delivery service rates for over 10 MW consumers is anything but merely "optical." ... ComEd's proposed distribution facilities charge of \$5.45/kW ... would increase charges for [a sample 11 MW] building ... over \$410,000 per year...

(BOMA Ex. 3.0, pp. 7-8, ll. 152-168).

To put it more simply, the 133% increase in distribution facilities charges for over 10 MW consumers that ComEd has proposed would translate into real dollars and cause real rate shock. ComEd's claim that percentage increases do not constitute factual

evidence in support of BOMA's proposal completely ignores the actual facts and consequences of ComEd's proposed rate increase.

ComEd also argues in its Initial Brief that interested intervenors have failed to present a proposal that represents a coherent ratemaking approach. (ComEd In. Br., pg. 202). However, BOMA's proposal to allocate any revenue requirement increase (or decrease) for nonresidential consumers on an across-the-board, equal percentage basis to ComEd's existing nonresidential customer classes not only is extremely coherent but more importantly is the best alternative in light of ComEd's utter failure to justify its proposed consolidation of nonresidential rate classes.

Perhaps realizing that its proposed massive rate increase for over 10 MW consumers is falling on deaf ears, ComEd's Initial Brief also sets forth ComEd's alternative proposal under which ComEd would maintain a separate over 10 MW customer class and phase in the rate increase for this class by one half in this rate case and one half in ComEd's next delivery services rate case. (ComEd In. Br., pp. 202-203). If the Commission rejects BOMA's proposal to retain ComEd's existing nonresidential customers classes and allocate any revenue requirement increase (or decrease) to nonresidential consumers on an across-the-board basis, then BOMA urges the Commission to adopt ComEd's alternative proposal to maintain a separate over 10 MW class and phase-in the increase for the over 10 MW customers. This approach is the minimum step necessary to avoid massive rate shock to these consumers. BOMA has no objection to the Commission adopting ComEd's 24-hour Maximum Kilowatts Delivered ("MKD") proposal if the Commission phases in the rate increase for over 10 MW consumers. However, BOMA emphasizes it is critical that the rate increase for over 10

MW consumers be phased in if BOMA's across-the-board approach is rejected, regardless of the Commission's decision on ComEd's 24-hour MKD proposal or any other issue in this proceeding.

(3) High Voltage Class Rates

ComEd argues in its Initial Brief that BOMA's proposal that ComEd continue its current approach of providing a credit on distribution facilities charges to high voltage consumers through Rider HVDS would essentially provide an unwarranted double benefit to these consumers because they would receive both a lower demand (i.e., distribution facilities) charge through the separate high voltage class proposed by ComEd and a credit on these lower demand charges. (ComEd In. Br., pg. 204). This argument completely mischaracterizes BOMA's proposal and indicates that ComEd fundamentally misunderstands it. BOMA has never proposed that ComEd both create a separate high voltage class and provide those consumers with a credit. To the contrary, BOMA proposed that the Commission reject ComEd's proposal to create a separate high voltage class. (BOMA Ex. 3.0, pg. 8-9, ll. 169-186).

Under BOMA's proposal, high voltage consumers would be assigned to their appropriate nonresidential delivery service class based on their peak monthly demand just as they are now. BOMA further proposes that the Commission order ComEd to also continue its current practice of providing a credit to high voltage consumers through Rider HVDS and allocating the lost revenues resulting from the credit to all nonresidential customer classes on an equal percentage, across-the-board basis. (BOMA Ex. 1.0, pg. 14, ll. 293-299). BOMA's proposal would not provide any "double benefit"

to high voltage consumers; rather BOMA proposes a single benefit, a credit, to reflect the lower costs of serving high voltage consumers.

BOMA's proposal is necessary because the separate high voltage class approach proposed by ComEd does not have the same impact as the HVDS credit approach on non-high voltage over 10 MW consumers. (BOMA Ex. 3.0, pg. 9, ll. 179-181). This is demonstrated clearly by the 133% rate increase to non-high voltage over 10 MW consumers proposed by ComEd in this case. (BOMA Ex. 3.0, pg. 9, ll. 181-182). Therefore, it is critical that the Commission reject ComEd's proposal to create a separate high voltage customer class and order ComEd to maintain its current practice of a Rider HVDS credit for these consumers and allocation of ComEd's lost revenues from the credit on an equal percentage, across-the-board basis across all nonresidential customer classes. (BOMA Ex. 3.0, pg. 8-9, ll. 183-186). This approach will provide the same benefit of lower charges to high voltage consumers as ComEd's proposal to create a separate high voltage class without causing unnecessary rate increases to non-high voltage consumers.

8. Elimination of Rider 25

ComEd argues in its Initial Brief against the adoption of BOMA's proposal that ComEd exempt nonresidential electric space heating customers from delivery service demand charges on electricity used for space heating for the purpose of making the post-2006 rate increase for nonresidential space heating customers comparable to the increase for nonresidential non-space heating customers. (ComEd In. Br., pp. 219-221). However, ComEd did not rebut the testimony of BOMA witnesses Messrs. Brookover and Childress that ComEd's elimination of separate rate treatment for nonresidential

space heating consumers will cause massive rate shock for these consumers because they currently are charged approximately 17% less under ComEd's bundled rate Rider 25 (which ComEd has proposed to eliminate on January 1, 2007) than they would be charged under ComEd's otherwise applicable charges. (BOMA Ex. 1.0, pg. 8, ll. 164-174, pg. 10, ll. 207-213; BOMA Ex. 1.1; BOMA Ex. 1.2). Rather, ComEd falls back on the same old arguments that its witnesses have used throughout these proceedings which already have been thoroughly addressed and discredited by BOMA's witnesses.

ComEd contends that separate rate treatment of nonresidential space heating consumers is no longer cost based and creates an improper subsidy to these consumers. (ComEd In. Br., pg 219). In support of this contention, ComEd states that BOMA presented no evidence to indicate that the costs of providing delivery service are somehow different for nonresidential space heating consumers. (ComEd In. Br., pg. 220). However, it is of course ComEd that has the burden of providing the cost basis for its rates. ComEd witness Mr. Crumrine admitted that ComEd has not analyzed the cost of providing delivery service to nonresidential space heating customers. (ComEd Ex. 23.0, pg. 35, ll. 739-740). Furthermore, Mr. Crumrine testified under cross examination that ComEd has never even kept records of the costs to serve nonresidential space heating consumers on the "wires portion" of the business during his extensive experience with ComEd. (Trans. pg 2239, ln. 11 - pg. 2240, ll. 1). BOMA witness Mr. McClanahan testified that unless ComEd can show that there is a cost basis for eliminating separate rate treatment for nonresidential space heating consumers, ComEd should not be allowed to do so. (BOMA Ex. 4.0, pg. 3, ll. 58-60). Clearly, ComEd has not and cannot at this

time establish a cost basis for elimination of this separate rate treatment and therefore should not be allowed to eliminate such treatment.

ComEd's Initial Brief also claims that BOMA's proposal to exempt nonresidential space heating consumers from demand charges on electricity used for space heating amounts to free delivery service for two-thirds of the year. (ComEd In. Br., pg 219). However, as discussed in BOMA's Initial Brief, BOMA makes no such proposal. (BOMA In. Br., pg. 13-14). Rather, BOMA's proposal exempts nonresidential space heating consumers only from demand charges for electricity actually used for space heating. Electricity used by a nonresidential space heating consumer in non-summer months for any other purpose (e.g., lighting, elevators, computers, etc.) would not be exempted from demand charges under BOMA's proposal. (BOMA In. Br., pg. 13-14). This is exactly the same approach used by ComEd in its current bundled rate Rider 25. ComEd's slant on BOMA's nonresidential space heating proposal is inaccurate and therefore should be disregarded by the Commission.

ComEd also tries to attack BOMA's nonresidential space heating proposal by claiming that: "What BOMA raises in this proceeding is a supply - not distribution costs issue." (ComEd In. Br., pg 220). However, as BOMA witnesses Messrs. Brookover and Childress testified, BOMA's proposal does not address a supply-related impact through delivery service tariffs because ComEd's bundled rate Rider 25 currently provides an exemption from demand charges for both supply and delivery of electricity used for space heating. (BOMA Ex. 3.0, pg. 4, ll. 70-71) BOMA's proposal is designed to merely continue that exemption for nonresidential space heating consumers on ComEd's delivery of electricity in ComEd's delivery service tariffs because these tariffs will now

be applicable to all ComEd consumers if ComEd's proposals to eliminate its current bundled rates are accepted by the Commission. (BOMA Ex. 3.0, pg. 3, ll. 71-73).

In a final attempt to dissuade the Commission from adopting BOMA's nonresidential space heating proposal, ComEd declares that the Commission has already made its conclusion concerning BOMA's proposal in ComEd's procurement case (ICC Docket 05-0159). This claim is wrong. The Commission rejected BOMA's proposal in the procurement case only because the Commission found that it was not the appropriate forum for considering changes to ComEd's delivery service tariffs. (ICC Docket 05-0159, Final Order, pg. 234). Moreover, ComEd's Chairman and CEO Frank Clark testified in the procurement proceeding that the appropriate place to address the issue of rate shock for nonresidential space heating consumers was in the delivery services rate case. (ICC Docket 05-0159, Trans. pg. 217, ln. 20 – pg. 218, ln. 9). In fact, Mr. Clark acknowledged that he testified to that effect in the procurement case in the following exchange in this docket:

Q. Now, you testified in that [procurement] case, did you not, that the question of rate shock-- this is Page 217, line 20, through Page 218, line 9 – that the question of rate shock for nonresidential space heating customers can be more appropriately addressed when ComEd files their delivery services rate filing and that the issue will be more properly debated and discussed in that docket, correct?

A. Yes.

(Trans., pg. 195, ll. 1-10).

The bottom line is that this is the last chance for the Commission to take action to avoid the massive rate shock that otherwise will occur for nonresidential space heating customers on January 1, 2007. Therefore, the Commission should order ComEd

to exempt all nonresidential space heating consumers (including heating with light consumers) from demand charges in ComEd's delivery services tariffs on electricity used for space heating starting in January 2007. Otherwise, the Commission should not approve ComEd's proposed elimination of bundled rate Rider 25.

17. Rider Resale

Staff states in its Initial Brief that it does not object to BOMA's proposed language for Rider Resale, which was adopted by ComEd in its rebuttal testimony, since Staff does not advocate requiring landlords that resell electricity to their tenants under Rider Resale to become certified as Alternative Retail Electric Suppliers. (Staff In. Br., pg. 121). ComEd, IIEC and CES have all stated in their initial briefs, as well as testimony, that BOMA's proposed Rider Resale language was acceptable. (ComEd Ex. 24.0, pp. 23-24, ll. 596-628; ComEd In. Br., pg. 232; CES Ex. 5.0, pp. 5, ll. 56-68; CES In. Br., pg. 20; IIEC Ex. 5.0, pg. 20, ll. 446-456; IIEC In. Br., pg. 48). Therefore, the Commission should approve BOMA's proposed Rider Resale language in its final order in this proceeding.

22. Proposed Change in Definition of Maximum kW Delivered

As discussed above in Section III.H.1.b)2) Very Large Load Customers of this Reply Brief, BOMA does not object to the adoption of ComEd's 24-hour MKD proposal if the Commission determines that a plan to phase-in the rate increase for over 10 MW consumers should be contingent on implementation of a 24-hour MKD.

X. CONCLUSION

WHEREFORE, for the above stated reasons and the reasons stated in BOMA's Initial Brief, BOMA requests that the Commission do the following:

- (a) adopt the revenue requirement recommended by Staff in this proceeding; and
- (b) adopt the language of BOMA's Draft Order previously filed in this proceeding.

Respectfully submitted,

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